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ENERGY AND ENVIRONMENT CABINET
DEPARTMENT FOR ENVIRONMENTAL PROTECTION

ANTHONY R. HATTON
COMMISSIONER

300 SOWER BOULEVARD
FRANKFORT, KENTUCKY 40601

February 28, 2020

Brian K. Wood, P.E.
Executive Director
Plantmix Asphalt Industry of Kentucky

Re: Response to Public Comments
KPDES No.: KYG110000
General Permit for Concrete Products, Asphalt
Paving and Ready-Mixed Concrete Operations
AI No.: 35050

Dear Mr. Wood;

Your comments concerning the above-referenced draft permit have been reviewed and responses prepared in accordance with Kentucky Pollutant Discharge Elimination System (KPDES) regulation 401 KAR 5:075, Section 12. The comments have been briefly described below and our responses to those comments follow:

COMMENT 1: The Definition of NODI Code 2 has changed from the previous permits and the new language is problematic for our members. The specific concern is with the requirement that the outfall is to be removed is not feasible or practical given the possibility that the plant may want to operate again in the future. The impact of this change is that members will be required to visit and obtain samples from rural plants that are not staffed or operating.

Removing the outfall would likely only occur if the site was abandoned for use as a hot mix asphalt plant. Given the possibility of future changes in workload, it would not make sense to completely reclaim the site so contractors will want to keep their permits active. For that reason, it is unlikely that a contractor would ever be able to use NODI Code 2 given the condition to remove the outfall. The revised language in this draft permit is likely to lead to some unnecessary or redundant testing and our preference would be to eliminate the added language about removing the outfall and revert to the language in the existing permit.

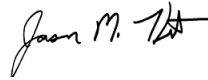
Our request is that the Division of Water revert back to the language that was used in the prior permits and not implement this change to the NODI Code 2 definition.

RESPONSE 1: DOW appreciates the comment and believes NODI Code 2 is appropriately used as described in the draft. With the draft permit, this NODI Code has been defined for clarity as to the meaning. Per 40 CFR 122.1(b) "The NPDES program requires permits for the discharge of "pollutants" from any "point source" into "waters of the United States"." Point source is defined in 40 CFR 122.2 as "any discernible, confined, and discrete conveyance... from which pollutants are or may be discharged." The requirement to sample is not based upon the current activity, but on the stormwater exposure to potential pollutants discharging from a point source. To include this NODI Code for removal of the outfall is a tool for the permittee to report that the outfall is no longer required and it has been physically removed, and can be used until the time that DOW issues the permit modification.

Any demand for a hearing on the permit shall be filed in accordance with the procedures specified in KRS 224.10-420, 224.10-440, 224.10-470 and any regulations promulgated thereto. Any person aggrieved by the issuance of a permit final decision may demand a hearing, pursuant to KRS 224.10-420(2), within thirty (30) days from the date of the issuance of this letter. Two (2) copies of request for hearing should be submitted in writing to the Energy and Environment Cabinet, Office of Administrative Hearings, 211 Sower Boulevard, Frankfort, Kentucky 40601 and the Commonwealth of Kentucky, Energy and Environment Cabinet, Division of Water, 300 Sower Boulevard, Frankfort, Kentucky 40601. For your record keeping purposes, it is recommended that these requests be sent by certified mail. The written request must conform to the appropriate statutes referenced above.

If you have any questions regarding the KPDES decision, please contact the Surface Water Permits Branch by phone at (502) 564-3410 or via email at SWPBSupport@ky.gov. Further information on procedures and legal matters pertaining to the hearing request may be obtained by contacting the Office of Administrative Hearings at (502) 564-7312.

Sincerely,



Paul Miller, P.E.
Director, Division of Water

PM: JMH: asw
Enclosure